

because it: (a) destroys nationwide uniformity in rates, terms and conditions of mobile telecommunications service; (b) discourages investment in and rapid deployment of new wireless technologies in Kentucky; (c) creates regulatory disparity across state lines; (d) promotes discrimination in rates, terms and conditions of service among customers of different states; and (e) provides an incentive for other states to burden CMRS with similar tax-burden-shifting mechanisms.

41. Plaintiffs therefore are entitled to a declaration, pursuant to 28 U.S.C. § 2201, that the muzzle provision violates, and is preempted by, the Communications Act of 1934, as amended, and the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2.

42. Plaintiffs are further entitled to a preliminary and permanent injunction, pursuant to 28 U.S.C. § 2202, restraining the Defendants from enforcing (or threatening to enforce) the muzzle provision of Section 96(3) of House Bill 272 against Plaintiffs.

(..continued)

³ A true and correct copy of this letter is attached as Exhibit C.

Count II

(Abridgment of Free Speech in Violation of the First Amendment of the U.S. Constitution)

43. Plaintiffs incorporate herein by reference the allegations set forth in the preceding paragraphs.

44. But for the muzzle provision, the Plaintiffs could pass on the 1.3% Kentucky gross revenues tax to their subscribers through a written line item placed on the customer's bill that would notify customers of the origin and amount of the charge.

45. The muzzle provision prohibits Plaintiffs from communicating with their customers through their billing statements about the gross revenues tax. The muzzle provision thus restricts speech on the basis of its content.

46. Use of a separate line item on customer bills to identify and quantify state taxes such as the gross revenues tax is neither false nor misleading.

47. The muzzle provision's restriction on Plaintiffs' ability to inform their customers about the gross revenues tax in a line item does not serve any compelling or substantial state interest and is far more extensive and burdensome than necessary to serve any such state interest.

48. Accordingly, the muzzle provision violates the free speech protections set forth in the First and Fourteenth Amendments of the United States Constitution.

49. Plaintiffs are therefore entitled to a declaration, pursuant to 28 U.S.C. § 2201, that the muzzle provision and its enforcement and threatened enforcement against Plaintiffs violates their rights under the First and Fourteenth Amendments of the United States Constitution.

50. Plaintiffs are further entitled to a preliminary and permanent injunction, pursuant to 28 U.S.C. § 2202, restraining the Defendants from enforcing (or threatening to enforce) the muzzle provision of Section 96(3) of House Bill 272 against Plaintiffs.

COUNT III

(Regulation of Interstate Commerce in Violation of the Commerce Clause)

51. Plaintiffs incorporate herein by reference the allegations set forth in the preceding paragraphs.

52. The Commerce Clause of the U.S. Constitution grants to Congress the power to regulate interstate commerce. U.S. Const. art. 1, sec. 8, cl. 3. This affirmative grant of authority to Congress also encompasses an implicit or “dormant” limitation on the authority of the States to enact legislation affecting interstate commerce.

53. Pursuant to the dormant Commerce Clause, a state law that either discriminates against or unduly burdens interstate commerce is unconstitutional.

54. In view of the inherently interstate nature of wireless telephone service, the interstate character of CMRS providers' facilities and operations, and the interstate structure of the CMRS market, laws regulating the rates charged by CMRS providers clearly affect interstate commerce.

55. The Kentucky gross revenues tax produces revenues which benefit only the citizens of Kentucky. The muzzle provision would have the effect of shifting the economic burden, but not the benefit, of the Kentucky gross revenues tax from Kentucky customers to customers residing in other states. Thus, the muzzle provision discriminates against and unduly burdens interstate commerce.

56. In addition, to the extent the muzzle provision forces one or more CMRS providers to abandon the national pricing plan model and give up the marketing and operational economies of scale that flow from having national pricing plans, the muzzle provision further unduly burdens interstate commerce in relation to the putative local benefits, if any, of prohibiting CMRS providers from itemizing and/or separately charging for the Kentucky gross revenues tax.

57. Furthermore, the muzzle provision thwarts congressional telecommunications policies and objectives relating to interstate commerce because it: (a) destroys nationwide uniformity in rates, terms and conditions of mobile telecommunications service; (b) discourages investment in and rapid deployment of new wireless technologies in Kentucky; (c) creates regulatory

disparity across state lines; (d) promotes discrimination in rates, terms and conditions of service among customers of different states; and (e) provides an incentive for other states to burden CMRS with similar tax-burden-shifting mechanisms.

58. Plaintiffs are therefore entitled to a declaration, pursuant to 28 U.S.C. § 2201, that the Defendants' threatened enforcement and enforcement of the muzzle provision violates the Commerce Clause.

59. Plaintiffs are further entitled to a preliminary and permanent injunction, pursuant to 28 U.S.C. § 2202, restraining the Defendants from enforcing (or threatening to enforce) the muzzle provision of Section 96(3) of House Bill 272 against Plaintiffs.

Count IV

(Deprivation of Civil Rights in Violation of 42 U.S.C. § 1983)

60. Plaintiffs incorporate herein by reference the allegations set forth in the preceding paragraphs.

61. Defendants, acting under the color of state law, and through their threatened enforcement and enforcement of the muzzle provision, have caused or will cause Plaintiffs to suffer a deprivation of rights guaranteed by the Communications Act of 1934, as amended, and the Supremacy Clause, the

Commerce Clause and the First and Fourteenth Amendments of the United States Constitution.

62. Pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983, Plaintiffs are entitled to a declaration that Defendants, by their threatened enforcement and enforcement of the muzzle provision, will violate Plaintiffs' rights under the Communications Act of 1934, as amended, and the Supremacy Clause, the Commerce Clause and the First and Fourteenth Amendments of the United States Constitution.

63. Pursuant to 28 U.S.C. § 2202 and 42 U.S.C. § 1983, Plaintiffs are also entitled to a preliminary and permanent injunction restraining Defendants from enforcing or threatening to enforce the muzzle provision in violation of Plaintiffs' rights under the Communications Act of 1934, as amended, and the Supremacy Clause, the Commerce Clause and the First and Fourteenth Amendments of the United States Constitution.

64. As a further result of Defendants' violation of Plaintiffs' rights, Plaintiffs are entitled to an award of attorneys' fees and recoverable costs of suit pursuant to the Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief, as follows:

1. For a declaration: (a) that the muzzle provision constitutes prohibited state regulation of CMRS rates and is therefore preempted by the Communications Act of 1934, as amended, and the Supremacy Clause; (b) that the muzzle provision conflicts with, and is therefore preempted by, the comprehensive federal regulatory scheme for wireless telecommunications and the Supremacy Clause; (c) that the muzzle provision regulates or burdens interstate commerce in violation of the Commerce Clause; (d) that the Defendants' threatened enforcement and enforcement of the muzzle provision violates Plaintiffs' First Amendment rights as applied to the states through the Fourteenth Amendment; and (e) that the Defendants' threatened enforcement and enforcement of the Muzzle Provision violates the Plaintiffs' civil rights pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

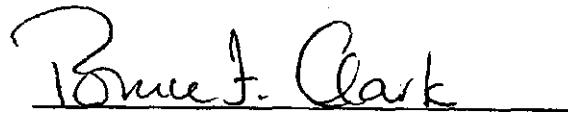
2. For a preliminary and permanent injunction restraining Defendants from enforcing, or threatening to enforce, the muzzle provision against Plaintiffs in violation of the Communications Act of 1934, and the Supremacy Clause, the Commerce Clause, and the First and Fourteenth Amendments of the United States Constitution.;

3. For attorney's fees and recoverable costs of suit and other expenses;
and

4. For such other and further relief as the Court may deem just and proper.

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